

STATE OF MICHIGAN
COURT OF APPEALS

HARRY R. JAVENS,

Petitioner-Appellant,

v

CITY OF MADISON HEIGHTS,

Respondent-Appellee.

UNPUBLISHED

October 28, 2003

No. 235301

Michigan Tax Tribunal

LC No. 00-268355

Before: Whitbeck, C.J., and Jansen and Markey, JJ.

PER CURIAM.

Petitioner appeals by right a decision of the Michigan Tax Tribunal upholding the city's assessments of residential rental property owned by petitioner for the 1998 tax year. We affirm.

Petitioner argues that the actual income generated from the rental property should have been used in the capitalization of income method to determine the true cash value of the property. Petitioner also argues that the value of the property should be reduced because of his self-imposed restrictions, i.e., his failure to maintain the property, resulting in inability to obtain a rental permit. We disagree.

This Court has held that the Michigan Tax Tribunal's assessment may not be attacked unless one can demonstrate fraud, error of law, or adoption of the wrong principles. Const 1963, art 6, § 28; *Presque Isle Harbor Water Co v Presque Isle Twp*, 130 Mich App 182, 189; 344 NW2d 285 (1983). "For the purposes of taxation, property is to be assessed according to its true cash value." *Id.*; Const 1963, art 9, § 3. Review of the tribunal's decision requires us "to inquire whether there was competent, material, and substantial evidence to support that decision. The absence of such evidence or the adoption of a wrong principle constitutes an error of law that compels reversal." *First City Corp v Lansing*, 153 Mich App 106, 112; 395 NW2d 26 (1986).

True cash value is defined as: "[T]he usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price which could be obtained for the property at private sale, and not at forced or auction sale." MCL 211.27; *Northwood Apartments v Royal Oak*, 98 Mich App 721, 725; 296 NW2d 639 (1980). "Generally, there are three accepted methods of valuation: the capitalization-of-income approach, the cost-less-depreciation approach, and the market approach." *First City Corp, supra*, 114. "The tribunal's

duty is to select the method which most accurately determines TCV after considering all the facts before it.” *Id.*

Here, petitioner presented a “valuation disclosure” which he essentially copied from an appraisal of another parcel of property. Petitioner argued that the capitalization of income approach was the only appropriate method for valuing the property, and that the actual rental income figure should be used in determining the property’s true cash value. But, because petitioner failed to maintain the property, he was unable to obtain a rental permit, and thus unable to rent the three units on the property. Petitioner contends that the sole value of the property is the value of the land, or \$10,000. Respondent argued that the actual income figure should be based on rental income that would be generated if petitioner properly maintained the rental units, obtained a rental license from the city, and rented out all three units.

This Court has said that “the capitalization-of-income method has been described as the most appropriate method for evaluating the TCV of income-producing property.” *First City Corp.*, *supra*, 116, citing *Northwood Apartments*, *supra*, 725. This Court explained the “capitalization of income method is based on the premise that there is a relation between the income a property can earn and the value of that property. This method estimates the present value of the amount of net income the property is expected to generate over its remaining useful life.” *Id.*, 725-726.

While petitioner is correct that the capitalization of income approach is generally the most appropriate method for evaluating the true cash value of income-producing property, this Court has held that it is not the only permissible method. *Wolverine Tower Assoc v Ann Arbor*, 96 Mich App 780, 782; 293 NW2d 669 (1980). Further, this Court has held that “actual income is not the only basis for calculating true cash value, even under the capitalization of income approach.” *Id.*, citing *Ramblewood Associates v Wyoming*, 82 Mich App 342, 345-347; 266 NW2d 817 (1978). This Court has affirmed a Tax Tribunal’s ruling that “actual income appropriately adjusted in light of market rentals in . . . comparable properties was a more reliable indication of true cash value than actual income alone.” *Wolverine Tower*, *supra*, 782. Similarly, in the instant case, the tribunal did not err in its determination that petitioner’s “self-imposed deficiencies and inefficient management is [sic] not a proper reason to lower the value of the subject property.” The tribunal determined that respondent’s use of the three traditional techniques (including the capitalization of income method based on actual income petitioner would generate if he maintained the property, obtained a rental license, and rented out the units) justified the true cash value of \$100,000.

Petitioner relies on this Court’s decision in *Pinelake Housing Coop v Ann Arbor*, 159 Mich App 208, 221; 406 NW2d 832 (1987), for the proposition that “if the property is burdened by some restriction . . . the impaired value of the property cannot be ignored and the property must be valued as restricted.” Petitioner’s argument is misplaced. *Pinelake* involved federal restrictions on rental income, while the instant case involves petitioner’s self-imposed restriction of being unable to obtain a rental permit because he failed to complete the required maintenance. The tribunal did not err in its determination that the value of the property should not be reduced because of petitioner’s “self-imposed deficiencies and inefficient management.”

Respondent determined the final opinion of the property's value to be \$100,000. The capitalization of income approach indicated a total value of \$103,000; the cost-less-depreciation approach indicated a total value of \$100,000; and the market approach indicated a total value of \$100,000, for a final opinion of value of \$100,000. The tribunal noted that respondent's "appraisal used the three traditional techniques to justify the true cash value placed upon [petitioner's] property," and found "the appraisal sufficient information upon which to rely to affirm the assessed, state equalized and taxable value placed upon the property."

It is well settled that "the Tax Tribunal is under a duty to apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances." *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998), citing *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). Even though the burden of proof is on the petitioner to establish the true cash value of the property, "proceedings before the Tax Tribunal are original and independent and are considered de novo pursuant to MCL 205.735(1)." *Great Lakes* *supra*, 389. Therefore, "the Tax Tribunal has a duty to make its own, independent determination of true cash value." *Id.* This Court has held:

The Tax Tribunal is not bound to accept the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value. [*Id.*, 389-390.]

Here, although while the tribunal did not explicitly state which valuation method it relied on in determining the property's true cash value, its not doing so is unimportant because the three valuation approaches respondent proffered yielded essentially the same value. The tribunal sufficiently articulated a basis for its decision affirming the property's true cash value: it attacked petitioner's lack of evidence, and determined that respondent's employment of the three valuation methods justified affirming the previously determined true cash value of the property. The tribunal's determination was based on competent, material, and substantial evidence; therefore, there is no error necessitating reversal.

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Jane E. Markey